IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 204 OF 2004.

Mr.Amin Merchant. ... Petitioner.

V/s.

1. Bipin M. Gandhi.

2. Dipak G. Cholera. ... Respondents.

P.K.Samdani with Suresh J. Purohit
for the petitioner.

R.M.Kadam with Ajay Khandhar
for the respondents.

CORAM : S.U.KAMDAR, J.

DATED : 30th November, 2004.

JUDGMENT :
========

. By the present petition, the petitioner is challenging an award of the Appellate Bench of Arbitration Tribunal of Mumbai Stock Exchange, dated 17th September, 2003 passed in Appeal No.19A of 2003.

2. Some of the material facts of the present case, briefly enumerated, are as under:

. According to respondent No.1, the petitioner was introduced to him through one Shri Vijay C. Shah for carrying on various transactions of purchase and sale of various

shares of Bombay Stock Exchange. It is an admitted position that there is no member-client agreement executed by and between respondent No.1 and the petitioner. Respondent No.1 is a Director of M/s.Krishna Incap Services Pvt.Ltd. who is a member of National Stock Exchange of India. However, in respect of National Stock Exchange, there is client constitution agreement by and between the Company viz. M/s.Krishna Incap Services Pvt.Ltd. and the petitioner herein.

3. According to respondent No.1, there are transactions by and between respondent No.1 and the petitioner on the Bombay Stock Exchange in Settlement Nos.A-29 and A-30 of the year 2000-2001. According to respondent No.1, as on 20th October, 2000 there was a debit balance of Rs.6,30,006.05 in the books of accounts of respondent No.1 in the name of petitioner herein. On 27th October, 2000 petitioner issued a cheque bearing No.001673 dated 27th October, 2000 for a sum of Rs.6,00,000/- drawn on UTI Bank Ltd. The said cheque was returned dishonoured on 31st October, 2000, 2nd November, 2000 and 31st March, 2001 on presentation and representation. A criminal complaint under section 138 of the Negotiable Instruments Act is pending before 33rd

Court of Metropolitan Magistrate. According to respondent No.1, he had issued confirmation memos and bills for Settlement Nos.A-29 and A-30 to the petitioner herein and, thus, there was outstanding amount in respect of transaction effected by the petitioner with respondent No.1 in the aforesaid settlement period of the Bombay Stock Exchange. It is the case of respondent No.1 that in spite of repeated reminders petitioner did not make any payment of the aforesaid amount and the cheque which was issued was also dishonoured.

4. In view of the said outstanding amount, respondent No.1 filed arbitration reference before the Bombay Stock Exchange being Arbitration Reference No.717/2002. In the said arbitration reference petitioner herein raised contention that there is no arbitration agreement between the parties and the learned arbitrator has no jurisdiction to entertain and try the reference. He further contended that byelaw No.248 of the Rules, Regulations and Byelaws of the Stock Exchange do not apply. He also disputed the fact that he was introduced by one Shri Vijay C. Shah to respondent No.1. However, before the Arbitrator the petitioner admitted that there were transactions carried out through M/s.Krishna Incap

Services Pvt.Ltd. on the National Stock Exchange. He also admitted that there was member-client agreement between them on National Stock Exchange. He, however, disputed the transactions which were covered by Settlement Nos.A-29 and A-30 of the year 2000-2001 on the Bombay Stock Exchange. Thus, consequently, he also denied that there is any liability to pay sum of Rs.6,30,060.05 as claimed by respondent No.1. He also contended before the Arbitrator that a cheque of Rs.6,00,000/- was issued not towards the said transaction but was issued as post-dated cheque as and by way of deposit in compliance with the condition put by respondent No.1 for issuing a Bolt terminal in favour of petitioner herein. Petitioner contended that the said cheque was obtained by misrepresentation by respondent No.1 contending that he is a member of Bombay Stock Exchange and, therefore, the said cheque does not pertain to the suit transaction. It is further case of the petitioner that the said cheque was to be deposited in the bank only after completion of required formalities for installation of Bolt. He further contended that, in fact, when he came to know that respondent No.1 is not a member of Stock Exchange he claimed that the said cheque should be returned to him.

5. On the aforesaid contention, the matter was heard by the Arbitrator and the Arbitrator vide his order dated 5th May, 2003 rejected the claim of respondent No.1 on the ground that respondent No.1 has failed to establish authenticity and genuineness of the claim made before him.

6. Being aggrieved by the said award dated 5th May, 2003, in accordance with rules, regulations and byelaws of the Bombay Stock Exchange, respondent No.1 preferred an appeal being Appeal No.19A of 2003 before the Appellate Bench of the Stock Exchange comprising of five Arbitrators. The Appellate Bench vide its award dated 17th September, 2003, set aside the order passed by the single Arbitrator in Arbitration Reference No.717/2002 and has directed the petitioner to pay to respondent No.1 a sum of Rs.6,30,060.05 together with further interest thereon at the rate of 12% from 2nd December, 2002 till payment and also directed to pay costs of Rs.7,500/-. It is this award passed by the Appellate Bench of the Stock Exchange which is a subject matter of challenge in the present

arbitration petition.

7. Mr.Samdani, learned counsel for the petitioner has challenge the said award, essentially, on two grounds. The principal contention is that the award of the Appellate Bench does not discuss the findings given by the single Arbitrator and it gives no reasoning why the Appellate Bench found the said award of single Arbitrator as erroneous. Thus, consequently, he submits that the award of the Appellate Bench is a non-speaking award and without any reasons. The second contention, which was raised by the learned counsel for the petitioner, is that the Appellate Bench ignored the admission on the part of respondent No.1 that it is not the liability of the petitioner to make payment of Rs.6,30,060.05 but is the liability of a third party and, therefore, according to learned counsel for the petitioner, the Appellate Bench has committed serious error in awarding the claim against the petitioner herein. In view thereof, learned counsel for the petitioner submits that the said award passed by the Appellate Bench is liable to be quashed and set aside.

8. I have considered the submissions advanced by learned counsel for the petitioner. In my view, firstly, the award of the single Arbitrator being a subject matter of appeal before the Appellate Bench of arbitral tribunal the same is merged in the award passed by the Appellate Bench and it is not open for this Court to scrutinise the award passed by the single Arbitrator so as to determine the validity or otherwise of the award passed by the Appellate Bench. The aforesaid proposition is supported by the judgment of the Apex Court in the case of **M/s.Subhash Aggarwal Agencies v. M/s.Bhilwara Synthetics Ltd.**, AIR 1995 SC 947; wherein it was held as under:

> "The appellate award, once made, completely replaces the original award of the arbitrators."

9. In view of the aforesaid proposition of law laid down by the Apex Court, it is not possible to accept the contention of the learned counsel for the petitioner to examine the validity of the appellate award by scrutinising the findings given by the single Arbitrator in the original award. In my view, I have to examine the validity of the appellate award as it is and ascertain whether the same is assailable under

section 34 of the Arbitration and Conciliation Act, 1996. The contention of the petitioner that the award of the Appellate Bench does not contain any reason and that the Appellant Bench has not considered each and every findings given by the single Arbitrator in the original award and has not given reasons why the Appellate Bench does not agree with such findings. In my view, it is not necessary for the Appellate Bench to go into such exercise. If the Appellate Bench has given reasoning why it has granted the claim of respondent No.1 and why it is not agree with the original award passed by the single Arbitrator that by itself is sufficient. In my view, it is not required for the Appellate Bench to judge each and every findings given by the lower bench of the Arbitrator and give reasons why it does not agree with the said findings given by the single Arbitrator while passing the original award. The learned counsel for the petitioner, however, relied upon the aforesaid judgment in the case of **M/s.Subhash Aggarwal Agencies** (supra), particularly, para- 27 and 28 of the said judgment which are reproduced hereinbelow:

"27. From the above extract it is manifest that:

> 1. non-reasoned award violative of natural justice.
>
> 2. Equally, such an award would not put a party under a disadvantage, in that, he is unable to question the same by discerning the error apparent on the face of the record. The plea of the respondents for which reliance is placed on the above quoted passage from Mustill & Boyd (2nd Edition) is when an arbitrator's award is subject to an appeal the final award is the appellate award and the original award is replaced. Therefore, it is the appellate award that is made the rule of the court. Hence, reasons must be given by the appellate authority. This contention cannot be accepted in view of what we have held above.
>
> 28. Ofcourse, if the appellate tribunal reverses the arbitrator's award, it may be required to give reasons but that is not the position here."

10. In my view, the contention raised by the learned counsel for the petitioner is not supported by the ratio laid down by the Apex Court in the aforesaid judgment of the Supreme Court. What was held by the Apex Court in para- 27 and 28 that while confirming the award passed by the lower authority the appellate bench need not give reasons. However, it has been stated that when the appellate bench reverses the award of the lower authority then reasons are required to be given. The Appellate Bench in the present case has given detailed reasons for setting aside the award passed by the original authority. It is not possible to accept the contention of learned

counsel for the petitioner that all these reasons are required to be rejected because the Appellate Bench has not gone into each and every findings given by the single Arbitrator and has not given reasons why it came to a different conclusion. The requirement of giving reasons under section 31(3) of the Arbitration and Conciliation Act is fulfilled once the award is a speaking award and intelligible reasons are given in support thereof. It is a settled law that the arbitrator is not required to give elaborate judgment and few reasons, which indicate an application of mind and which are intelligible to arrive at particular conclusion, are sufficient. (AIR 1990 SC 1426- Raipur Development Authority vs. M/s. Chokhamal Contractors; AIR 1975 SC 230- N.Chellappan vs. Secretary, Kerala State Electriity Board; and AIR 1967 SC 378- Bungo Steel Furniture (Pvt.) Ltd. vs. Union of India). The argument of the learned counsel for the petitioner is, in fact, runs contrary to the well settled proposition of law. Learned counsel for the petitioner submits that the Appellant Bench must give elaborate judgment by considering each of the findings recorded by the lower authority. In my view, the aforesaid contention has no merit and I, therefore, reject the same.

11. Now this takes me to the consideration of second contention of the learned counsel for the petitioner that the Appellate Bench has not considered an admission on the part of respondent No.1 covered under the letter dated 27th April, 2001. On perusal of the award passed by the Appellate Bench, I find that this aspect has been considered by the Appellate Bench of the Arbitral Tribunal, particularly, in para-16 of its award. The learned counsel for the petitioner, however, contends that para-16 does not contain reasons but it merely sets out the contentions of the parties. On mere reading of para-16 of the said award I find that it is not mere discussion of the contentions but it deals with the contentions of the parties made before the Appellate Bench. In any event the said letter dated 27th April, 2001 has been addressed by the petitioner to respondent No.1 herein, inter alia, admitting the liability to pay sum of Rs.6,30,060.05. Merely because in the said letter it is mentioned that the transactions are done by Mr.Vijay C. Shah who is a Director of Parth Share & Stock Broking Pvt.Ltd. and not by the petitioner herein that does not amount to any admission by respondent No.1. Learned counsel for the petitioner, however,

contended that, in fact, this letter was addressed by the petitioner on the basis of draft letter submitted by respondent No.1 and, therefore, it should be treated as an admission on the part of respondent No.1. I am afraid, under limited jurisdiction under section 34 of the Arbitration and Conciliation Act whether it is open for me to consider this argument of the learned counsel for the petitioner. In any event the said argument has been duly considered and answered by the Appellate Bench in its award. I do not see any reason to interfere with the findings given by the Appellate Bench of the Arbitral Tribunal of the Stock Exchange.

12. In the aforesaid circumstances, I do not find any merit in the present arbitration petition. The same is, accordingly dismissed. However, there shall be no order as to costs.

*****